

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
CASE NO. 5:20-CV-00497-M

ADA YVETTE DAVIS,)
Plaintiff,)
)
v.)
)
WELLS FARGO AUTO, MICHAEL)
AIRY, and DAN BOOZER,)
Defendants.)

ORDER

This matter is before the court on Defendant Wells Fargo Bank, N.A.'s Motion to Dismiss Plaintiff's Complaint [DE-10] filed on November 16, 2020. A letter dated November 17, 2020, was sent to pro se Plaintiff notifying her of the motion's filing and that a response was required [DE-12]. Plaintiff filed a motion for extension of time to file a response [DE-13] on the basis of her need to "review the motion and prepare a response," which was granted up to and including December 28, 2020 [DE-14]. The new deadline to file a response to the motion has passed, and, as of the date of this order, Plaintiff still has not filed a response. As a result, the Motion to Dismiss [DE-10] is GRANTED. *See Osborne v. Long*, No. 1:11-cv-00070, 2012 WL 851106, at *10 n.5 (S.D. W. Va. Mar. 13, 2012) (referencing authority, including from the First, Third, and DC Circuits, for the proposition that federal courts may grant a motion to dismiss without reaching the merits on the grounds that the plaintiff's failure to respond operates as a concession to that motion or that dismissal is appropriate as a sanction for failure to prosecute).

As to Defendants Michael Airy and Dan Boozer, the docket in this action does not reflect that service has been effectuated within the required ninety-day period. *See* Fed. R. Civ. P. 4(m). A notice to this effect was sent to the Plaintiff on December 29, 2020 [DE-15] and she was

provided fourteen days to demonstrate good cause for her failure to serve these Defendants. The deadline to demonstrate good cause has passed, and, as of the date of this order, Plaintiff still has not filed anything to demonstrate good cause. Pursuant to Rule 4(m) of the Federal Rules of Civil Procedure, the court DISMISSES the action without prejudice against Defendants Airy and Boozer.

The court DIRECTS the Clerk to send a copy of this Order to counsel of record and any unrepresented party and to close the case.

SO ORDERED this the 10th day of February, 2021.


RICHARD E. MYERS II
CHIEF UNITED STATES DISTRICT JUDGE